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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,823	01/16/2004	Martin Brice	3647	6575
22474	7590	12/23/2005	EXAMINER	
DOUGHERTY CLEMENTS 1901 ROXBOROUGH ROAD SUITE 300 CHARLOTTE, NC 28211			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/758,823

Applicant(s)

BRICE ET AL.

Examiner

Josiah Cocks

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on RCE filed 11/18/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination ("RCE") under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's RCE and amendment filed on 1/18/2005 have been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-5, 7-16, and 18-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,919,084 to Maurice ("Maurice '084") in view of U.S. Patent No. 4,120,638 to Straitz, III ("Straitz '638").

Maurice '084 discloses in Figures 1-9 an invention in the same field of endeavor as applicant's invention and similar to that described in applicant's claims 1-5, 7-16, and 18-31. In particular, Maurice '084 shows a brooder (100) with reflector (132), ceramic heating element (110), burner (116), and pilot light/burner assembly (see Fig. 1) as described. This pilot light assembly including a perforated housing (22) with deflector cap (48) that directs flames to a thermocouple assembly with thermocouple (24) as described (note particularly Figs. 1, 2, and 8).

Maurice '084 does not disclose a windshield that provides a protected zone against high velocity air for the pilot light assembly wherein the windshield is formed as a partially perforated chamber with a surrounding sidewall.

Straitz '638 teaches a burner system with a pilot burner assembly that is considered analogous art to both applicant's invention and Maurice. In Straitz '638, the burner system includes a pilot burner assembly (15) with igniter (18) and thermocouple (80) that is generally constructed in the manner, and functions for the same purpose as, these structures shown in Maurice '084 (e.g. Fig. 2 of Maurice '084). The pilot burner assembly of Straitz '638 includes a slotted/perforated windshield (14) that is shown having a section that is partially perforated (any

of the slots illustrated) and a section that is solid (any of the solid horizontal or vertical pieces of the shield 14) (see Fig. 1, and col. 2, lines 23-33).

Therefore, in regard to claims 1-5, 7-16, and 18-31, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the pilot burner assembly of Maurice '084 to incorporate the wind shield of Straitz '638 as this wind shield desirably reduces the wind effect on the flame produced by the pilot burner assembly (see Straitz '638, col. 2, lines 25-30).

5. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maurice '084 in view of Straitz '638 as applied to the claims above, and further in view of U.S. Patent No. 5,964,214 to Ferlin et al. ("Ferlin").

Maurice '084 and Straitz '638 teach all the limitations of claims 6 and 17 except possibly for a radiant element that is in the form of a perforated stainless steel chamber.

However, the use of a stainless steel perforated chamber as a radiant element for a poultry is known in the art. Ferlin is cited to show such an arrangement wherein a poultry brooder includes a perforated stainless steel chamber (18 and perforations 44) that functions as the radiant element for providing heat, which is reflected downwardly by a canopy (29) to heat a lower area (see at least col. 2, line 62 through col. 3, line 17).

Therefore, in regard to claims 6 and 17, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the radiant element of Maurice '084 to incorporate the steel chamber of Ferlin as such a chamber is a well known light weight, low cost heating device in poultry brooders that desirably functions to generate heat for

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reflection by a reflecting device to a lower area (see col. 2, lines 3-11) in the same manner as the ceramic radiant element of Maurice '084.

### *Response to Arguments*

6. Applicant's arguments filed 11/18/2005 have been fully considered. These arguments and the associated amendments are persuasive to overcome the prior rejection of the claims based in part on the reference to Sneed. Applicant's claim limitation requiring the windshield to be in the form of a partially perforated chamber with a surrounding sidewall having both associated perforated and solid portions is sufficient to read over the shell/spoon-like windshield of Sneed. However, as described above, newly discovered reference to Straitz '638 shows a windshield for a pilot burner assembly that is structure as, and functions for, the same purpose as applicant's windshield. Accordingly, applicant's claims are not considered to patentably distinguish over the prior art.

### *Conclusion*

7. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is


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(571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
December 20, 2005

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749